Responsibility to Protect: A political science perspective on the international law section of the coalition agreement

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This contribution casts a view from political science on the coalition agreement between CDU, CSU, and SPD and its aim to expand international law norms, especially with a view to implement the Responsibility to Protect (R2P) (p. 171 coalition agreement). Understandably current analyses of the coalition agreement focus mainly on questions of domestic policy. Where foreign policy is a concern, the focus is on Europe and fiscal issues. But presupposing that SPD members vote in favour of entering a coalition with CDU and CSU; the agreement sets benchmarks for German foreign and UN policy over the course of the next four years. The envisioned goals are to be taken seriously, as from a political science and especially International Relations perspective the global politics chapter in the coalition agreement contains a number of issues, which deserve scrutinisation. This is a worthwhile undertaking not least for bringing concepts and ideas commonly discussed within the confines of the academic community closer to the citizens and, thereby letting them find their way into politics.

In the following we discuss the envisioned benchmarks and address potential problems with reference to the section about “United Nations, global dialogue and strategic partnerships” (p. 171 coalition agreement). Here, a specific focus is set on the Responsibility to Protect. The coalition agreement states: “A further development of international law should make a contribution so as to enable the United Nations to make a more effective contribution for the enforcement for freedom and human rights. The concept of the Responsibility to Protect requires further development with a view to implementation in accordance with international law. The prevention pillar of the R2P should be strengthened internationally” (p. 171 coalition agreement, our translation).

First of all, it is interesting to note that the Responsibility to Protect (R2P) is denoted as a “concept”. For the current literature on R2P displays somewhat diverging views on the concept . While some see R2P as a norm, others see it as a “political concept” and yet others advocate a more differentiated view on different parts of R2P (e.g. Alex J. Bellamy in his book “Global Politics and the Responsibility to Protect: From Words to Deeds”, Routledge, 2011).

Three questions arise from the paragraph cited above. First: How would the envisaged further development of R2P look like? Second: How would the thus developed R2P be implemented in accordance with international law? Third: Would the implementation based on international law really help in any way? Beyond theoretical relevance, the example of the current systemic crisis in Syria points to the particular political relevance of this question. (NB: Notably, the coalition agreement favours a “political solution” for Syria (p. 172 coalition agreement).) How this preference is to play out given the explicit commitment to R2P, on the one hand, and more than 125 000 killed and millions of refugees on the other, would be a discussion worthy of a separate comment. The following turns to each of the three questions in their turn.

With regard to the first question: How would a further development look like?

The agreement on R2P currently consists of § 138 & §139 of UN General Assembly outcome document from 2005. Within these two paragraphs we find reference to the four core crimes: *genocide, war crimes, ethnic cleansing, and crimes against humanity*. Attempts to widen the scope of R2P, for example with reference to natural catastrophes (France did try do to so in the aftermath of the cyclone Nargis in Burma/Myanmar 2008) have, so far, not been successful. The procedural agreement that the UN Security Council takes case-by-case decisions on the necessary actions including actions under Chapter VII of the charter remains relatively undisputed. The single exception is a recurring reference to the United for Peace resolution, as was recently noted also by Louise Arbour in the German

weekly *DIE ZEIT*.

Thus, the remaining option of further development can be found in the coalition agreement itself as the plan to strengthen the preventive pillar of R2P. The strategy to conceptualise R2P via three pillars: “Responsibility of States” (pillar 1), “Prevention” (pillar 2); and “actions of the international community” (pillar 3) is based on a report by the UN Secretary General Ban Ki-Moon from 2009. The use of such a focus on prevention is disputed (see for example Aidan Hehir in his book “The Responsibility to Protect Rhetoric, Reality and the Future of Humanitarian Intervention“, 2012, MacMillan). It remains to be seen what kind of development the federal government has in mind.

This brings up the second question: How could an implementation based on international law look like? Legally the outcome document of the General Assembly is not binding. While the UN Security Council resolution 1973 on Libya, where the council acts under Chapter VII UN charter, is binding, this does remain a case specific decision. The inconsistent application of R2P also means that the conditions for the development of customary international law are not given. Furthermore the question arises as to which parts of R2P already constitute codified international law. The genocide convention prohibiting genocide since 1946 is legally binding and can by now beyond doubt considers as *ius cogens* including obligations *erga omnes,* something that the ICJ Judgment from 2007 on the convention made clear. A legal codification of the other three crimes in a similar form would be an implementation in accordance with international law, but whether this would be of any use remains doubtful. Neither the genocide in Rwanda nor in Darfur was stopped despite the genocide convention being in place. Therefore this strategy is less about the further legalisation of global governance than about developing a concept for the implementation of norms through the integration of *stakeholders*

This raises the third – and from a political science perspective – most interesting question: Would an implementation in international law suffice? The paragraph above already anticipated the answer, i.e. an implementation in international law does not suffice. Why this is the case is demonstrated by more recent theories on norms in international relation that engage with the – relevant question (especially for politics) – of implementing the norms of international law. Despite the absence of a world government international relations tend to relay on the concept of an international community, whose members – the UN member states – feel obliged to observe these norms.

While on the one hand joint conventions, treaties and resolutions form the foundation of legitimacy for those norms, other constitutional (*i.e.* the veto powers in the Security Council), as well as socio-economic differences (*i.e.* representation through the G77 or the G20) point to a notable political imbalance of the UN model. This, in turn, makes for conditions that constitute a specific challenge for the implementation of norms in the global realm.

In order to endorse and enforce the implementation of norms as a goal which is specifically outlined by the coalition, two political science arguments are provide a useful reference frame. They may be helpful to guide the development of specific policy measures on the part of the incoming federal government. The following briefly sketches these two perspectives.

The *liberal democratic* perspective assumes that the goal to implement shared moral values, which derive legitimacy from international law, in the global realm of the UN into the realm of the member states proceeds with reference to the principle of majority rule. By contrast, the *radical democratic* perspective is based on the assumption of diversity. It therefore derives the legitimation of norms from the principle of contestedness *i.e.* the possibility for member states to question the substance of global norms.

Both perspectives can be found in current theories on norms. On the one hand the assumption is a process of norm diffusion. This means that the implementation of international law norms is conceptualized as a *cycle*. Hence the implementation of norms through political actors is a step-by-step process of transferring legitimacy in the formal sense of international law (*top-down model).*

On the other hand, and contrary to this is the concept of *contestation*, which assumes that legitimacy of international law norms is strengthened through regular contestation. Here it is suggested that regular forums of contestation

should ensure the participation of affected actors (*bottom-up model).* This could be achieved, for example, through a right of convening *ad-hoc* contestation forums. Akin to the *ombudsperson's office* in the context of individual sanctions, these would function based on case-by-case activation and could be chaired by independent experts.

A transparent creation of those forums would in our view – especially in light of the circumvention of UN procedures through BRICS or other groups of states – which are not assumed for in the liberal democracy model, pose a promising possibility for the further development of R2P or other norms. Louise Arbour for example points as well to the G20 in the already mentioned *ZEIT* article.

Finally, it is worthwhile noting that the strategy of international law implementation, which is advanced by the coalition agreement, does not represent the last word regarding the endeavour to ensure world peace. Instead, and at best it may present a point of departure for conducting necessary debates and establishing new venues of contestation. In the end, this may effectively result in a democratically legitimised implementation of the R2P norm.

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